

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3128

STATE OF NEW JERSEY

DATED: NOVEMBER 9, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3128.

This bill would allow the owners and operators of restaurants, bars, and breweries to use outdoor spaces which they own or lease and which are located on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages, including alcoholic beverages if so licensed. The bill defines “outdoor spaces” as including patios and decks, both covered and uncovered, yards, walkways, and parking lots, or a portion thereof. The bill would also allow the owners and operators of restaurants, bars, and breweries, to use public sidewalks, as defined in the bill, as an extension of their business premises for that purpose, as well.

The bill requires owners and operators of restaurants, bars, and breweries seeking to utilize outdoor spaces or public sidewalks as extensions of their business premises pursuant to the provisions of the bill to file an application with the municipal zoning officer, including information concerning the use of the outdoor spaces or public sidewalks, as appropriate. The zoning officer is required to approve an application that is compliant with the bill’s provisions within 10 business days of the submission of the application. The bill also prohibits municipalities from charging fees for the filing of the application or issuing the approval.

Under the bill, a municipality may require an applicant to provide one or more of the following: (1) written consent of the owner of the premises, if other than the applicant; (2) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; or (3) an indemnification agreement with the municipality with respect to losses arising solely from the operation of the outdoor dining facility.

Restaurants, bars, or breweries operating under the provisions of the bill are required to follow, maintain, and enforce protocols promulgated by the Commissioner of Health or the Governor in response to the COVID-19 public health emergency, concerning social distancing and use of personal protective equipment during the period

those protocols are in effect. The bill also provides for the operation of “bring your own bottle” privileges in applicable outdoor spaces and on public sidewalks.

The bill also permits municipalities to control the days and hours of certain activities, including the outdoor service of food and beverages, including alcoholic beverages if so licensed, and live performances, as well as to deny, revoke, or suspend, the outdoor dining activity of any establishment that violates the provisions of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates the bill will nominally increase administrative expenses for the State and result in an indeterminate reduction in revenues due to the bill prohibiting the State from collecting license fees for expanded premises for certain restaurants, bars, and breweries. The bill will also nominally increase administrative and enforcement expenses for municipalities and lead to a potential indeterminate reduction in revenues for municipalities due to the bill prohibiting zoning officers from collecting application fees. Any fiscal impact would be in effect no longer than the bill’s expiration date, January 2, 2023.

Under the bill, the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety would issue a special ruling within ten calendar days of the effective date of the bill entitling certain license holders to expand their premises. In addition to this potential administrative expense, the special ruling would not require licensees to submit an application to, receive approval from, or pay a fee to the division (or the municipality) to extend their licensed premises. On June 3, 2020, Special Ruling 2020-10 issued by the division allowed businesses to apply, for a \$75 fee, for the “COVID-19 Expansion of Premises Permit,” to enable licensees and permittees to expand their licensed premises into outdoor areas. All permits issued are set to expire on November 30, 2020.

On October 19, 2020, Special Ruling 2020-21 issued by the division allowed for over 2,300 permits to be extended to March 31, 2021 for a fee of \$10. According to the Special Ruling, if a permit holder fails to renew their license they must cease alcohol sales in the permitted area and apply for a new permit before resuming sales in that area – which the OLS believes to mean that a \$75 fee would be required, in accordance with Special Ruling 2020-10. The bill appears to preempt the division from charging the \$75 application fee, as well as the \$10 renewal. As a result, the OLS concludes that the bill’s impact would result in an indeterminate reduction in revenues for the State.

Similarly, the bill requires a zoning officer to approve a compliant application, along with other documentation as may be required by the municipality, within ten business days of being submitted and is

forbidden from charging a fee for accepting the application or issuing the approval. The OLS is not aware of how many municipalities were or were not already charging application fees for this purpose. Due to the fact that it is unknown whether zoning officers were or were not intending on charging a fee for this purpose, the OLS concludes that the bill could result in a potential indeterminate reduction in revenues for municipalities. Municipalities may also incur nominal additional costs to ensure that health protocols are being adhered to at restaurants, bars, and breweries with expanded premises.